

ESTTA Tracking number: **ESTTA540632**

Filing date: **05/29/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92056608
Party	Defendant Next Level Sportsystems, Inc. and Sierra Sportswear, Inc.
Correspondence Address	JOHN MACK NEXT LEVEL SPORTSYSTEM INC AND SIERRA SPORTSWEAR 26 ERICA DRIVE LANGHORNE, PA 19047 UNITED STATES johnmack@nextlevelsports.com
Submission	Other Motions/Papers
Filer's Name	Susan B. Meyer
Filer's e-mail	ipdocket@gordonrees.com, smeyer@gordonrees.com, sgill@gordonrees.com
Signature	/Susan B. Meyer/
Date	05/29/2013
Attachments	Motion to Accept Late-Filed Answer.pdf(15707 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

YS GARMENTS, INC.)	
)	Proceeding No. 92056608
)	
v.)	Registration No. 3503550
)	
)	Mark: NEXT LEVEL
NEXT LEVEL SPORTSYSTEMS, INC.)	
and)	
SIERRA SPORTSWEAR, INC.)	
)	
Registrants.)	

**MOTION TO LATE FILE REGISTRANTS’
ANSWER TO FIRST AMENDED PETITION FOR CANCELLATION**

Registrants Next Level Sportsystems, Inc. and Sierra Sportswear, Inc.
 (“Registrants”) herein move the Board to accept late filing of Registrants’ Answer to
 First Amended Petition for Cancellation.

This cancellation proceeding was filed by Petitioner YS Garments, Inc. on
 December 20, 2012. Registrants Next Level Sports Systems, Inc. and Sierra Sportswear,
 Inc. answered the petition February 7, 2012.

Upon request of the parties, a discovery conference with Board participation was
 held April 12, 2013. Although Petitioner was represented by counsel, Registrants were
 represented by a corporate representative. At the conference, the Interlocutory Attorney
 found Petitioner had failed to adequately plead its standing and claim of damage.
 Petitioner was granted twenty days to file an amended petition and registrants were

granted twenty days from the date on the certificate of service of the amended petition to file and serve an answer. [See, Discovery Conference Order, April 12, 2013].

Petitioner filed its First Amended Petition for Cancellation on April 26, 2013. Therefore, Registrants' answer was due May 16, 2013.

Registrant Next Level Sportsystems' President John Mack spoke with the interlocutory attorney on or about May 23, 2013 to convey that it would need until May 29, 2013 to retain counsel for this matter and to prepare and file the Answer. Mr. Mack was instructed to file a motion for late filing with the Answer. Furthermore, Counsel for Petitioner YS Garments, Inc. agreed to not object to extension of time to file the Answer through May 29, 2013.

Good cause for granting the motion should be found because the delay in filing was not the result of willful conduct or gross neglect on the part of Registrants, but rather the retention of counsel, as recommended by the Interlocutory Attorney, for this matter. Registrants have been actively involved in this case, including attending the discovery conference. Therefore, this is not a case of registrant neglect of the matter. Petitioner will not be substantially prejudiced by the delay as Registrants are not requested any of the trial dates set be moved. Lastly, as reflected in the Answer filed herewith, Registrants have a meritorious defense, namely that they have not abandoned the mark and that Petitioner does not have priority of use.

Pursuant to TBMP § 312.02, with good cause showing, and a lack of objection from Petitioner, Registrants herein move the Board to accept a late-filed answer in this proceeding.

All other dates ordered in the April 12, 2013 Discovery Conference Order can remain as set by the Board.

Respectfully submitted,

Date: May 29, 2013

/s/ Susan B. Meyer
Susan B. Meyer
Attorneys for Registrant
NEXT LEVEL SPORTSYSTEMS, INC.
GORDON & REES LLP
101 W. Broadway, Suite 1600
San Diego, CA 92101-8217
Tele: (619) 696-6700 / fax (619) 696-7124
smeyer@gordonrees.com

Respectfully submitted,

Date: May 29, 2013

/s/ Sandeep Sharma
Sandeep Sharma
President, Registrant
Sierra Sportswear, Inc.
1384 Broadway, Suite 1400
New York, NY 10036

CERTIFICATE OF SERVICE

I hereby certify that a copy of this **MOTION TO LATE FILE REGISTRANTS' ANSWER TO FIRST AMENDED PETITION FOR CANCELLATION** is being served on May 29, 2013 by Federal Express to:

JESSIE K REIDER
BUCHALTER NEMER APC
1000 WILSHIRE BLVD, SUITE 1500
LOS ANGELES, CA 90017
UNITED STATES

Attorney for Petitioner
YS Garments, Inc.

/s/ Sharee Gill _____

Sharee Gill